CF0000062445

(2)

IN THE HIGH C OURT OF JUDICATURE M.P. AT JABALPUR.

Criminal Appeal No. 1653 of 1999.

(8460)

21/6/99 R.K. Sahu Advocate

APPELLANT : Salik Ram S/o GaituRam (Raut) aged about 27 years R/o Maghaganw, Polic Chauki Dadhi, Police Station Nawagarh, Distt. Durg.

ACCUSED (IN JAIL)

V E R S U S

RESPONDENT : The State of M.P. through the Police Station Nawagarh (Dadhi) Distt. Durg.

Received copy of Petition with Annexures
16 CLERK
Office Advocate General
JABALPUR

APPEAL U/S 374 OF THE CODE OF CRIMINAL PROCEDURE.

XI-HC-78

(70)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ...Cr.A.No...1653/99 **सन्** 200

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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D.B. : Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

13-2-2007

Mr. Rajesh Jain, counsel for the appellant.
Mr. U.N.S. Deo, Addl. Public Prosecutor for the respondent/State.

Today, this matter has been listed in view of the letter dated 14-1-2007 sent by Superintendent, Central Jail, Raipur mentioning therein that the accused is in detention as per the judgment dated 3-4-1999. It appears that bail was granted to the accused/appellant but he could not furnish bail bond, therefore, he could not be released and he is in detention since 21-4-1994 thereby he is in detention for more than 12 years and 9 months. Therefore, Mr. Jain submits that the appeal may be finally heard, to which, Mr. U.N.S. Deo has no objection. In the circumstances, the appeal is heard for final disposal.

Arguments heard.

Oral judgment dictated on Dais.

Per L.C.Bhadoo, J. :

By this appeal, the appellant has questioned legality and correctness of judgment of conviction and order of sentence dated 3-4-1999 passed by Additional Sessions Judge, Bemetara in Sessions Trial No. 205/1994, whereby the learned Additional Sessions Judge, after holding the accused/appellant guilty for commission of the offence under Section 392 read with Section 397 of I.P.C. sentenced him to undergo 7 years R.I., to pay a fine of Rs. 200/-, in default of payment of fine, to further undergo 3 months R.I. He has also been convicted under Section 302 of I.P.C. and has been sentenced to undergo imprisonment for life

P.T.O.

(71)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ..Cr.A.No...1653/ 09 **सन्** ~~200~~

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -2- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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and to pay a fine of Rs, 200/-, in default of payment of fine, to further undergo three months' R.I.

2. Case of the prosecution, in brief, is that on 3rd April 2007 Sonmati Bai (since deceased) along with her son Dilip went to field of one Latei in Uditara Khar for the purpose of collecting wood. After collecting wood Dilip returned to his house however Sonmati Bai stayed back. Finding Sonmati Bai all alone, accused/appellant after committing murder of Sonmati Bai looted her silver bangles. When Sonmati did not return by evening, Dilip – son of Sonmati Bai, went in search of his mother to the field and to his utter surprise he saw that his mother was lying dead in paddy field and blood was oozing out from the injuries. Some unknown person had committed her murder by using sharp edged weapon and looted silver bangles. Village Kotwar and Sarpanch were informed, they came on the site and thereafter Dilip –son of the deceased reported the matter, based on that, FIR (Ex.P.-1) was registered for commission of offence under Sections 302 & 397 of the IPC. During investigation, while in police custody the accused/appellant gave memorandum under Section 27 of the Evidence Act under Ex.P-2, in pursuance of that one pair of silver bangles was taken into possession under Ex.P-3. Iron axe, one sandow baniyan and one towel stained with blood were taken into possession under Ex.P-4. Site plan of the place of occurrence was prepared by Patwari (P.W.-7) under Ex.P-9. Inquest on the body of Sonmati Bai was conducted under Ex.P-13 after giving notice to the panchas. Body of Sonmati Bai was sent to Primary Health Centre, Nawagarh under Ex.P-16 for post mortem where Dr. B.R.Joshi conducted post mortem and prepared post mortem report Ex.P-6. He opined that cause of death is due to shock and comma

P.T.O.

(72)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ...Cr.A.No...1653/~~सन्~~ ~~200~~

**आदेश पत्रक (पूर्वानुबद्ध)**

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as a result of multiple injuries and death was homicidal in nature. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Raipur and report Ex.P-22 was received. During investigation recovered silver bangles were put to identification parade before P.W-9 Gyaneshwar Bawangade. Articles were identified by Dilip and identification memos Ex.P-10A and Ex.P-11 were prepared. After completion of investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Bemetara who in turn committed the case to the Sessions Judge, Durg from where the learned Additional Sessions Judge received the case on transfer for trial.

3. Prosecution in order to establish the charges against the accused/appellant examined twelve witnesses. Statement of accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent, he has been falsely implicated in the crime. He produced one witness namely Jagnandan in his defence. Learned Additional Sessions Judge after hearing learned counsel for the respective parties convicted and sentenced the accused/appellant as aforementioned.

4. We have heard Mr. Rajesh Jain on behalf of the accused/appellant and Mr. U.N.S.Deo on behalf of the State. Having heard learned counsel for the parties we have perused the judgment of the trial Court as well as record and evidence.

P.T.O.

(73)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ...Cr.A.No. 1653 सन् 99 ~~200~~

**आदेश पत्रक (पूर्वानुबद्ध)**

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5. In this case there is no direct or ocular evidence in order to connect the accused/appellant with the crime in question. The case rests on circumstantial evidence which are

i) that, just before the death of Sonmati Bai the accused/appellant was seen there at the place of occurrence with axe-the weapon of offence in his hand.

ii) that, the silver bangles of Sonmati, as also axe-the weapon of offence and the towel of the accused/appellant stained with blood were recovered at his instance under Ex.P-3 and Ex.P-4 based on the memorandum of accused/appellant Ex.P-2.

6. As per settled law, in order to convict an accused/appellant with the crime based on circumstantial evidence, the Apex Court in the matter of ***Dhananjay Chatterjee Vs. State of West Bengal*** reported in ***(1994) 2 SCC 220*** held that

"In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the Court can form the basis of conviction and the more serious the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(74)

**मामला क्रमांक** .....Cr.A.No.1653/99 सन् ~~200~~

**आदेश पत्रक (पूर्वानुबद्ध)**

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crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

7. Based on the above principles, we have carefully scrutinized the material available on record. So far as last scene theory is concerned, two witnesses have been produced by the prosecution namely P.W -1 Dilip-son of the deceased and P.W.-4 Chait Ram. P.W-1 Dilip in his evidence has stated that on the fateful day he along with his mother went to the field of Latel in Udtara Khar for the purpose of collecting wood. Accused/appellant Salik Ram was also with them. He was carrying axe with him, his mother enquired as to why he is carrying axe. Thereafter he returned and his mother stayed back. When after sometime his mother did not return, he went back in search of his mother. He saw that his mother was lying dead. He has doubt that accused/appellant has committed murder of his mother, therefore he lodged report Ex.P-1. There is improvement in the evidence of above witness for the reason that in the FIR Ex.P-1 lodged by him he has mentioned that some unknown person has committed murder of his mother. He nowhere mentioned that the accused/appellant was on the spot with his mother. Even in his statement recorded by the Investigating Officer under Section 161 of the Cr.P.C. under Ex. D-1 it has not been mentioned that the accused/appellant was present at the place of occurrence when this witness left his mother behind. In view of above two factors that the name of the accused/appellant did not find place in the FIR, that there is no mention in the statement of this witness under Section 161 of the Cr.P.C. that the accused was present on the spot, his Court evidence cannot be believed. So far as evidence of P.W.-4 Chaitram is concerned, his evidence is also

P.T.O.

(75)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ....Cr.A...No...1653/99 ~~सम् 200~~

**आदेश पत्रक (पूर्वानुबद्ध)**

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of no use for the reason that he has stated that when he was returning after collecting wood he saw that accused/appellant was coming to his house while grazing his cattle and he was carrying axe in his hand, therefore there is no categorical evidence that the deceased was standing with the accused/appellant and this witness left those two persons behind. Moreover in the cross examination this witness has stated that he did not know accused/appellant Salik Ram, on the day when he was grazing cattle Salik Ram was not known to him, police people informed him about the name of Salik Ram therefore there is no conclusive evidence of this witness to the effect that in fact he saw the accused/appellant with the deceased, therefore the prosecution has not been able to establish the last scene theory in order to connect the accused with the crime in question.

8. So far as the second circumstance that the silver bangles of the deceased were recovered at the instance of the accused/appellant, is concerned, in the first instance the investigating Officer had simply stated that he recorded the memorandum Ex.P-2 in presence of witnesses and it bears his signature from "B" to "B" place. He has not proved the memorandum by saying that what information was given by the accused/appellant and whether leading to that information the articles were recovered at the instance of the accused/appellant. P.W.-3 Mohammed Ali has also stated that the accused gave memorandum Ex. P-2 and the silver bangles were taken into possession under Ex.P-3. He has also not stated as to what information was given by the accused in his presence to the investigating Officer. in cross examination he has stated that the accused/appellant did not disclose to the investigating Officer that

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(76)

**मामला क्रमांक** ....Cr.A.No.....1653/99 ~~सन् 200~~

**आदेश पत्रक (पूर्वानुबद्ध)**

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in which place the silver bangles have been concealed. As far as identification of the bangles by P.W -1 Dilip in presence of P.W-9 Gyaneshwar Bawangade is concerned, in para 5 of his evidence, he has stated that he identified the silver bangles in police station and thereafter he said that he does not know where is the Tahsil Office and what are Tahsil, Court and police station, he does not know. He has also stated that his sister-in-law Gadori Bai and brother Malik Ram were also there. He has also stated that he affixed thumb impression in the police station. Gadori Bai has been examined as Ex.P-6 but she has not stated anything about identification. Moreover Tahsildar Gyaneshwar Bawangade (P.W.-9) in his cross examination stated that the articles which were mixed with the looted silver bangles were brought by Dilip himself from the market therefore in view of the evidence of Dilip (P.W.-1) and Gyaneshwar Bawangade (P.W.-9), the prosecution has not been able to establish that identification parade was conducted in a proper manner. When the articles were brought by Dilip himself then how it can be said that there was a fair identification of silver bangles. Moreover, as has been held above that the recovery of silver articles is also doubtful therefore, the prosecution has not been able to connect the accused/appellant with the crime in question on the basis of recovery of silver bangles.

9. Now coming to the recovery of axe and clothes of the accused/appellant, there is no report of Serologist that blood which was found on the axe and clothes was of human and was of blood group of the deceased, without which it is difficult to connect the accused with the crime in question.

P.T.O.

XI-HC-78

(77)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ....Cr.A.No.:.1653/99 **सन्** 200

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -8- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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10. No other point was argued by learned Additional Public Prosecutor. In the result, for the foregoing reasons we are of the considered opinion that there is no legal evidence available on record to connect the accused/appellant with the crime in question based on circumstantial evidence. Therefore the conviction of accused/appellant under Section 392 read with Section 397 of the IPC and 302 of the IPC cannot be sustained. The appeal filed by the accused/appellant succeeds. Same is allowed. Conviction and sentence imposed upon the accused/appellant under Section 392 read with Section 397 of the IPC and 302 of the IPC are set aside and he is acquitted of those charges. The accused/appellant is in detention since 21.07.94 thereby he is in detention for more than 12 years and nine months therefore he be set at liberty forthwith if not required in any other case.

**Sd/-**
**L.C.BHADOO**
**Judge**

**Sd/-**
**DHIRENDRA MISHRA**
**Judge**

P.T.O.